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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 2 8 2005
EAC 04 211 50912

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a medical scientist at the University of Medicine and Dentistry of New Jersey (UMDNJ). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states that the petitioner "is an Award-winning Internationally Renowned Medical Scientist" who "rose to national prominence for her graduate research regarding etiology of anal canal carcinoma," which has been linked to human papilloma virus (HPV) infection. More recently, the petitioner has studied possible genetic causes of various cancers. Counsel states:

> Single Nucleotide Polymorphism (SNP) is the most common type of genetic variations scattered throughout the human genome. . . . SNPs have become ideal genetic markers for disease studies. SNP genotyping promises to explain the basis of heritable variation in disease susceptibility such as cancer or diabetes, reveal the predisposition of adverse reactions to drugs, as well as disclose a record of human migrations. . . .
>
> [The petitioner] has made remarkable progress in developing a SNP genotyping system. . . .
>
> [The petitioner] is currently incorporating 12,000 high-quality SNPs covering the entire genome into the higher-level multiplex genotyping system with as few as several assays. Then she is going to analyze 1,000 breast carcinoma specimens with this system to get full collection of genes that contribute to the development of cancer and to select SNPs that are located within the regions associated with LOH and allele imbalance. Eventually, she will acquire a genome-scale understanding genetic basis of breast cancer.

Counsel claims that the petitioner's "outstanding achievements have been widely recognized by her peers." Four witness letters accompany the initial submission. Two of the witnesses are UMDNJ faculty members. The only witness outside of New Jersey is Professor [redacted] of Auburn University, who states:

> Although I do not know [the petitioner] personally, I became familiar with her research by reading her research papers and discussing with her topics that we share interest. Of [the petitioner's] many scientific achievements, the most remarkable one is the high throughput genotyping system that she has recently developed. This system is currently without parallel in the genomic field. . . . [The petitioner] has incorporated highly efficient multiplex PCR amplification with accurate mini-sequencing reactions as a way to detect multiple polymorphisms in a single tube with >99% accuracy. . . .
>
> [The petitioner's] system not only makes it possible to perform genome scale analyses of diseases such as breast cancer, it can also be used to predict whether an individual will experience adverse drug reactions to a particular combination of drugs as well.

The other witness letters offer similar assertions, and assert that the petitioner plays a leadership role in her current projects.

The petitioner submits copies of her published articles and presentation abstracts, and indicates that five of her articles have been cited an aggregate total of 19 times. Roughly half of these citations are self-citations by the petitioner or her collaborators, leaving ten independent citations. Thus, on average, there are two independent citations for each of the five articles. This citation record appears to be minimal, and it certainly is not *prima facie* evidence of the international renown that counsel claims the petitioner has earned.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work, but stating that the petitioner had failed to show that it would be in the national interest to grant the petitioner a waiver rather than subject the petitioner to the job offer/labor certification process that normally applies to aliens working in her field. The director stated that, given the claims set forth in the initial filing, "[i]t is expected that the record would contain a much wider spectrum of letters, award[s], honors, etc."

On appeal, the petitioner maintains that she is responsible for "a **major breakthrough** in PCR technique" (emphasis in original) and other discoveries and innovations. The petitioner's own assessment of the significance of her own work is, clearly, of minimal probative value; otherwise, all a petitioner would have to do to secure an immigrant visa would be to declare his or her work to be of unprecedented importance. Many of the honors claimed by the petitioner diminish in importance upon examination. For instance, counsel has stressed the petitioner's memberships in organizations, for which being a graduate student appears to be sufficient grounds for admission; and we place little weight on the petitioner's listing in a *Who's Who* directory, because such books appear to exist primarily to be sold to the individuals listed therein rather than for any wider scholarly purpose.

We must look beyond what the petitioner herself, and her attorney, have to say about the petitioner and her work. One objective measure of the impact of the petitioner's work (rather than the petitioner's perception of

what that impact is) is independent citation of her published material. On appeal, the petitioner submits a copy of the same information that had accompanied the initial filing, showing ten independent citations of five of the petitioner's articles; the majority of the petitioner's published work has, apparently, never been cited at all. Therefore, the petitioner's citation record is not a strong factor in the petitioner's favor.

Seven new witness letters accompany the appeal. The most highly placed of the new witnesses appears to be Professor [redacted], chair of the Department of Genetics at Yale University, as well as a member of the National Academy of Sciences and chair of a National Institutes of Health oversight panel relating to large-scale genomic sequencing. Prof. [redacted] states:

> I became familiar with [the petitioner's] work through her publication in Genome Research of a new method for genotyping single nucleotide polymorphisms, and have come to know her through our discussions of this method. This new method is highly innovative and has significant advantages over prior art. It is of considerable significance to the field and has the potential to have major impact on the performance of genotyping in laboratories across the country. . . .
>
> I believe [the petitioner] is an exceptionally qualified and dedicated biomedical researcher who will continue to make significant contributions to human genetic research.

Professor [redacted] chairs the Department of Urology at Johns Hopkins University School of Medicine, and is acting chair of the International Consortium for Prostate Cancer Genetics. He states:

> [The petitioner] was invited to give a presentation in my laboratory recently. I was deeply impressed with [the petitioner's] research achievement in the development of a novel SNP genotyping method and its application in cancer research. . . . With this technology, it is possible to perform multiplex analysis of more than 1,000 sequences in a single tube using only a very limited amount of template material. In fact, even a single cell may suffice. Thus far, this system has provided one of the most sensitive high-throughput platforms in the world, with a unique ability for scalable multiplex SNP assays, which is ideally suited to molecular cancer and genetic research. . . .
>
> In addition to the development of this powerful genotyping platform, [the petitioner] has applied it with great effect in the high-resolution analysis of loss of heterozygosity (LOH) of two chromosomes in colorectal carcinomas (CRC). . . . For the first time, she obtained a high-resolution LOH profile of chromosome 6 and 18 in CRC. She also uncovered a high frequency of LOH on chromosome 18 that is strongly associated with pathological features, especially with certain tumor subtypes. . . . Only after [certain candidate] genes are isolated, will it be possible for scientists and physicians to identify new markers of prognostic, diagnostic and therapeutic significance that could lead to more effective management of this common disease. . . .

> [I]f we assume that 10 genetic markers are necessary to perform LOH analysis for one gene and two experiments should be performed for each individual to identify LOH, then for 100 candidate genes, at least 2,000 experiments must be performed using a routine genotyping method. However, with [the petitioner's] method, only two reactions are required to perform the same analysis. As a consequence, much time, effort and money will be saved while at the same time yielding better results with less material.

The above letters, and similar ones submitted on appeal, support the conclusion that ranking experts consider the petitioner's work to be an especially significant innovation within her specialty. While there are significant weaknesses in other aspects of the petitioner's claim, those shortcomings do not inherently discredit the testimony of expert witnesses who appear to be independent of the petitioner and her group of immediate collaborators and instructors.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that highly placed, independent experts in the scientific community recognize the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.